Nos. 29 and 50

In the Supreme Court of the United States

October Term, 1958

William B. Cammarano and Louise Cammarano,
His Wife, petitioners

v.

United States of America

F. Strauss & Son, Inc., of Arkansas, petitioner

v.

Commissioner of Internal Revenue

ON WRITS OF CERTIORARI TO THE COURTS OF APPEALS FOR THE EIGHTH AND NINTH CIRCUITS

BRIEF FOR THE RESPONDENTS

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CITATIONS

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No. 29

WILLIAM B. CAMMARANO AND LOUISE CAMMARANO,
HIS WIFE, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 50

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v.

COMMISSIONER OF INTERNAL REVENUE

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OPINIONS BELOW

The opinion of the Court of Appeals in No. 29 (C. R. 134–139) [1] is reported at 246 F. 2d 751. The

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[1] The designation "C. R." refers to the printed record in No. 29, *William B. Cammarano and Louise Cammarano, His Wife* v. *United States of America*, and the designation "S. R." refers to the printed record in No. 50, *F. Strauss & Son, Inc. of Arkansas* v. *Commissioner of Internal Revenue*.

opinion of the Court of Appeals in No. 50 (S. R. 38–44) is reported at 251 F. 2d 724.

The oral opinion of the District Court in No. 29 (C. R. 27–30) is not reported. The opinion of the Tax Court in No. 50 (S. R. 26–32) is reported at 28 T. C. 591.

JURISDICTION

The judgment of the Court of Appeals in No. 29 was entered on July 8, 1957 (C. R. 139). A petition for rehearing was filed on August 27, 1957, and was denied on October 15, 1958 (C. R. 140). The petition for a writ of certiorari was filed on January 10, 1958, and was granted on March 3, 1958 (C. R. 140). The judgment of the Court of Appeals in No. 50 was entered on January 24, 1958 (S. R. 44–45). A petition for rehearing was denied on March 3, 1958 (S. R. 45). The petition for a writ of certiorari was filed on April 16, 1958, and was granted on May 26, 1958 (S. R. 46). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED

Whether taxpayers' payments to organizations established to finance publicity campaigns aimed at defeating proposed initiative legislation in the States of Washington and Arkansas are deductible as "ordinary and necessary" business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939.

STATUTES AND REGULATIONS INVOLVED

Sections 23 (a) (1) (A), 23 (o) and (q), and 101 (6) of the Internal Revenue Code of 1939, and Sections 29.23 (o)–1 and 29.23 (q)–1 of Treasury Regulations 111, are set forth in the Appendix, *infra*, pp. 55–57.

STATEMENT

These cases involve the question of deductibility, as "ordinary and necessary" business expenses, of sums paid by the respective taxpayers to organizations established to finance publicity programs designed to defeat initiative proposals in the States of Washington and Arkansas.

NO. 29

This is an action instituted to recover income taxes paid by taxpayers for the year 1948. The relevant facts found by the District Court (C. R. 44–47) may be summarized as follows:

Taxpayers were husband and wife and filed a joint income tax return for the year 1948. They owned a one-fourth interest in a partnership carrying on the wholesale distribution of beer under the trade name "Cammarano Brothers" in Tacoma, Washington (C. R. 44–45).

In 1948, the partnership paid $3,545.15 to the Washington Beer Wholesalers Association, Inc., Trust Fund, of which taxpayers' proportionate share was $886.29. The trust fund was established on December 17, 1947, by the Association, of which the partnership was a member, to help finance an extensive statewide publicity program on the part of wholesale and

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retail beer and wine dealers (C. R. 45). The publicity program urged the defeat of "Initiative to the Legislature No. 13", which was submitted to the people of the State of Washington at the general election held on November 2, 1948, in accordance with the legislation provisions of the State Constitution. The Initiative would have placed the retail sale of wine and beer exclusively in state owned and operated stores (C. R. 45). The ballot title of the Initiative was as follows (C. R. 45): "An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all provisions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties."

The proposal had previously been submitted to the state legislature, and an officer of the Beer Wholesalers Association kept close track of its progress, contacted many of the legislators, and urged its defeat. The legislature did not act on the proposal (C. R. 45–46).

When the proposal was submitted to the people as an initiative measure, the wholesale and retail beer and wine dealers determined to undertake a vast publicity program aimed at the voters. This program was directed by a committee composed of members of the various groups and associations interested in defeating the proposal and was financed by contributions from such groups and associations and other interested parties. The committee established to direct the program was known as the Industry Advisory Com-

mittee, which received contributions totalling $231,-257.10. Of this total, the sum of $53,500 was contributed by the Beer Wholesalers Association, which collected it by assessing its members in accordance with their volume of business. The collections were handled through a trust fund established as a separate entity to receive and disburse the assessments. The publicity program was carried out by various types of advertising, none of which made reference to the wares or members of the Association as such. The proposal was defeated (C. R. 46).

Taxpayers deducted the sum of $886.29 in their tax return for the year 1948 and this deduction was disallowed by the Commissioner, resulting in an increase in tax in the sum of $153.98. After payment of this amount, this action for refund followed (C. R. 20–22).

The District Court found that the payments made by taxpayers to the trust fund were entirely for propaganda and aimed at the defeat of legislation and therefore concluded that such payments were not ordinary and necessary business expenses deductible under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939 and Section 29.23 (o)–1 of Treasury Regulations 111 (C. R. 47–48). The Court of Appeals affirmed, holding that deduction of the payments was prohibited by the regulation relied upon by the District Court and that this regulation was a proper exercise of the rule-making power.[2]

[2] The Court of Appeals also held, on the basis of a finding by the District Court, that taxpayers had failed to sustain their burden of establishing that passage of the initiative would have impaired their wholesale beer business (C. R. 134–139).

NO. 50

In this case, taxpayer filed a petition in the Tax Court requesting a redetermination of a deficiency in income tax for the year 1950 in the amount of $20,-990.36. By stipulation of the parties, the only issue submitted to the Tax Court for determination was whether the payment by taxpayer in 1950 of $9,252.67 to Arkansas Legal Control Associates, Inc., was deductible in computing income tax, either as an ordinary and necessary business expense under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939 or as a contribution under Section 23 (q) of the 1939 Code. If taxpayer prevailed on that issue, a deficiency of $6,500 was to be determined; if the Commissioner prevailed, the deficiency to be determined was $10,386.12 (S. R. 3-4, 17-18). The facts found by the Tax Court (S. R. 26-30), many of which were stipulated (S. R. 10-23), may be briefly summarized as follows:

Taxpayer is a corporation which, in 1950, was engaged in the wholesale liquor business in Arkansas, its principal place of business being located in Little Rock. Taxpayer kept its books and prepared its tax returns on the accrual basis (S. R. 27).

The sale of liquor in Arkansas has been legal since 1935, subject to state laws providing for countywide option. An initiative petition calling for an election on a statewide prohibition act was circulated in Arkansas, filed with the Office of the Secretary of State, placed on the ballot, and voted on in the general election held in Arkansas on November 7, 1950. The

general purpose of the act was to make it unlawful to manufacture, sell, barter, loan, or give away intoxicating liquors within the State of Arkansas, or to export from, import to, or transport the same within the state (S. R. 27, 30).

In May of 1950, nine liquor wholesalers, including the taxpayer, organized Arkansas Legal Control Associates, Inc., as a nonprofit corporation under the laws of Arkansas (S. R. 25, 27). The purpose of the wholesalers in forming the corporation was to provide means of coordinating their efforts to persuade the general public to vote against the proposed statewide prohibition act (S. R. 29).

For the period from May 30, to November 30, 1950, Arkansas Legal Control Associates, Inc., received contributions totalling $126,265.84, and disbursed over $100,000 for direct advertising through newspapers, radio, billboards, book matches, bar banners, special folders, and press releases.[3] Such advertising con-

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[3] On May 25, 1951, Arkansas Legal Control Associates, Inc., filed with the Commissioner an application for exemption under Section 101 (7) of the Internal Revenue Code of 1939, which exempts from taxation "Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual" (S. R. 29). This application for exemption was rejected by the Commissioner on October 11, 1951, in a letter which read in part as follows (S. R. 29):

> Inasmuch as the evidence on file in this office shows that your sole function and activity consisted of engaging in activities designed to influence legislation, through the use of the radio, advertisements in newspapers and dissemination of literature, it is the opinion of this office

tained reasons and statistics designed to convince the voters that it was to the public interest to defeat the proposed prohibition act (S. R. 29–30). The balance of the contributions was disbursed for related expenses of supervising and coordinating the advertising (S. R. 30). At the election of November 7, the initiative measure was defeated (S. R. 30).

Taxpayer's contribution to Arkansas Legal Control Associates, Inc., amounted to $9,252.67. On its income tax return for 1950, taxpayer deducted this amount from gross income as business expense. The Commissioner disallowed this deduction (S. R. 29–30).

The Tax Court, viewing the law as well settled in the light of *Textile Mills Corp.* v. *Commissioner,* 314 U. S. 326, and subsequent decisions of the Courts of Appeals and the Tax Court, denied taxpayer's claimed deduction and determined a deficiency in the amount of $10,386.12 (S. R. 30–32). In the Court of Appeals, taxpayer abandoned its contention that the payment was deductible as a contribution under Section 23 (q) of the 1939 Code. On petition for review, the Court of Appeals affirmed, holding, on the authority of

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that you are not entitled to exemption from Federal income tax as a business league under the provisions of section 101 (7) of the Code, and that you are not an organization of the same general class as a chamber of commerce or board of trade within the meaning of Income Tax Regulations III [111], section 29.101 (7)-1. You will accordingly be required to file Federal income tax returns on Form 1120.

Contributions made to you are not deductible by the donors in computing their taxable net income in the manner and to the extent provided by section 23 (o) and (q) of the Code.

Textile Mills Corp. v. *Commissioner, supra,* as well as numerous decisions of the Courts of Appeals, that the regulation was valid, that it had been in existence for over forty years and had been impliedly approved by Congress, and that it barred the deduction claimed as an ordinary and necessary business expense (S. R. 38-44).

SUMMARY OF ARGUMENT

Taxpayers contend that their payments to organizations established to finance publicity campaigns aimed at the defeat of initiative legislation are "ordinary and necessary" business expenses deductible under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939. Treasury regulations since 1918, however, have precluded the deduction of sums "expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda." Such regulations are valid and are applicable to payments made to finance publicity campaigns designed to defeat initiative proposals.

A

1. The validity of the regulation here questioned was sustained by this Court in *Textile Mills Corp.* v. *Commissioner,* 314 U. S. 326, under very similar circumstances. That case, as do these, involved no direct dealings with legislators (or "buttonholing" of Congressmen), but publicity activities designed to affect the passage of legislation. The regulation, as this Court noted, derived from rulings promulgated as early as 1915 and has been incorporated in income tax regulations in identical form ever since the Rev-

enue Act of 1918. It is a regulation issued as an interpretation of a statute which is not unambiguous, and is a valid exercise of the rule-making power conferred upon the officials charged with the responsibility of administering the revenue laws.

Not only did *Textile Mills* involve no direct dealings with members of Congress, but the publicity activities here involved were more directly designed to influence the promotion or defeat of legislation than those under review in that case. There, the publicity could only indirectly affect legislation by creating a body of public opinion which would influence the members of Congress, whereas here the publicity was addressed to and circulated among the legislators themselves, the voters of the States of Washington and Arkansas.

This Court, in *Textile Mills,* did not decide whether the contract to procure legislation, pursuant to which expenditures were made, was contrary to public policy. That question, in any event, is not controlling. The decisive issue is whether allowance of the deduction would contravene a defined legal policy expressed in a statute or regulation. *Commissioner* v. *Sullivan,* 356 U. S. 27, 29. A regulation expressing such a policy is involved here and precludes the deductions sought by the taxpayers.

2. The decision in *Textile Mills,* particularly when examined in the light of the facts involved, clearly upholds the validity of the challenged regulation as applied to a publicity campaign aimed at the promotion or defeat of legislation. This has been the view not only of the courts below in these cases, but of all courts which have considered the question.

3. The regulation in question, having been in existence for some forty years and during a period in which the underlying statutory provision has been repeatedly reenacted, has acquired the force of law. Not only has Congress never rejected the administrative interpretation thus placed upon the statute, but it has since incorporated like standards in the statutory provisions relating to the deduction of charitable contributions and the exempt status of organizations established for charitable and similar purposes.

4. The regulation is in direct accord with the long-established Congressional policy that political pressure activities designed to influence legislation be carried on without public subsidy or "subvention". Congress, since the Revenue Act of 1934, has denied deductions for contributions to charitable and similar organizations if a substantial part of their activities is "carrying on propaganda, or otherwise attempting to influence, legislation". The Revenue Act of 1934, and all subsequent Revenue Acts, have likewise denied exempt status to similar organizations substantially engaged in such activities. Congress has thus not merely forbidden the deductibility of the contributions actually used to influence legislation, but has prohibited the deduction of all contributions if the recipient organization is substantially engaged in activities aimed at influencing legislation. It would appear anomalous to permit the deductions as business expenses of payments to organizations established to finance publicity campaigns to promote or defeat legislation, when contributions to religious or charitable organizations may

not be deducted if a substantial part of the recipient organization's activities consists of attempts to influence legislation by similar means.

Numerous Congressional investigations have disclosed the influence and dangers, not only of direct lobbying, but of attempts to affect legislation by intensified advertising and other methods to "saturate the thinking of the community." Congress, in the statutory provisions referred to, has clearly demonstrated its intention that such activities shall not be subsidized through tax deductions. Taxpayers' position not merely conflicts with that policy, but would actually serve to aggravate the very problem which Congress sought to meet in enacting the legislation. At the present time, under the prevailing interpretation of Section 23 (a) (1) (A), any campaigns financed by industry to influence legislation cannot be charged to the Government by taking these expenses as a deduction. The financing is thus entirely out of the pocket of the concerns involved. This is equally true as to any citizens' organizations which might be formed to conduct similar campaigns, since contributions to these campaigns would not qualify as charitable contributions and accordingly are not deductible. The same is true of labor organizations. Thus a tax equilibrium exists. If the expenses of the business community were to become deductible, this tax equilibrium would be upset. While the business community could deduct their expenses, all others could not, *even with respect to the same legislation.*

The effect of such a change in the tax equilibrium would, moreover, be of particular benefit to the larger enterprises in the business community. The value of a deduction, in dollars and cents, depends on the tax rate applicable to the particular taxpayer. Thus, if a deduction were allowed for expenditures to influence legislation, the out-of-pocket cost of such expenditures would be sharply reduced for the businesses with large incomes (corporations, for example, would pay only 48¢ on the dollar, and many individual taxpayers would have an even lower net cost); but the smaller businessman would receive only slight benefit (his net cost would, for example, be 70¢ or 80¢ on the dollar).

Stated otherwise, the anomalous result of "public subvention" of such expenditures would be to *increase* the relative power of business enterprises (especially large ones), *vis-à-vis* private citizens and other taxpayers, to finance the "engineering of consent" on legislative matters. However, the pattern of Congressional action in this area indicates a Congressional purpose to reduce this disparity, not to increase it. In this delicate area, if any changes as above indicated are to be made, we submit that it is Congress—not the courts—which should make them.

5. Although no such contention was made in the courts below, taxpayers now suggest that, if the regulation be construed to preclude the deductions here claimed, a constitutional issue under the First Amendment may be presented since their publicity activities involve speech. The issue they pose is not a substantial one.

Only recently this Court pointed out (*Commissioner* v. *Sullivan,* 356 U. S. 27, 28) that "Deductions are a matter of grace and Congress can, of course, disallow them as it chooses." This statement, no doubt, is subject to the qualification that a grossly unreasonable classification of deductions will exceed constitutional limitations, particularly if the classification is "aimed at the suppression of dangerous ideas." See *Speiser* v. *Randall* 357 U. S. 513, 519. But that clearly is not this case. The regulation treats all legislation alike, regardless of the political party or pressure group; it does not single out any particular kind of legislation as good or bad, innocuous or dangerous, orthodox or radical. Nor does the regulation place any limit on the amount of money which can be spent on legislation or prescribe the manner in which it shall be spent. All that the regulation does is ensure that business organizations—no more than private citizens—shall not look to the Treasury to recoup the cost of influencing legislation.

The construction urged by taxpayers, moreover, would not avoid any constitutional issue. What is challenged is not merely the regulation, but the entire Congressional policy against "public subvention" of expenditures to influence legislation. This policy is expressed in statutory provisions not only prohibiting the deduction of contributions to charitable or similar organizations if they are substantially engaged in attempting to influence legislation, but also denying exempt status to those organizations which are substantially engaged in such activities.

B

1. Laws enacted as the result of initiative measures constitute, as taxpayers concede, "direct legislation by the people." Any attempt to avoid the application of the regulation in these cases upon the ground that initiative legislation differs from other forms of legislation is without substance. The initiative, as provided in the Constitutions of the States of Washington and Arkansas, is a reservation of legislative power by the people of those States, and the laws enacted thereby constitute legislation in the full sense of that term. The regulation does not attempt to distinguish between different types of legislation, nor have any of the courts which have considered the question. Taxpayers' position appears to be simply that the term "legislation", as used in the regulation, does not include "direct legislation."

If it be assumed that the adoption of the initiative and referendum were motivated by the desire to obtain freedom "from the control of money in politics," this purpose has not been accomplished here. The business enterprises vitally affected by the initiative proposals here involved expended large sums of money to secure the defeat of such proposals. Their expenditures differed from like expenditures on measures pending before legislatures only in that they required a publicity and advertising campaign directed to the voting public at large rather than to a limited number of legislators. The resources and motivations of self-interest remained the same. No difference in

principle has been suggested which would remove these financial pressures from the scope of a regulation precluding the deduction of sums expended for "the promotion or defeat of legislation."

Taxpayers' expenditures, moreover, were not only for "the promotion or defeat of legislation" but were also for "the exploitation of propaganda" within the meaning of the regulation. The publicity financed by them constituted "propaganda" within any accepted definition of that term, portraying as it did the initiative measures involved—for the sale of beer and wine in state stores in Washington and for prohibition in Arkansas—as leading to the return of the "speakeasy," "bootleggers," "gangsters," and "racketeers."

2. The regulation is not limited to "lobbying" activities (*i. e.,* direct dealings with legislators). To the extent that a distinction exists between such activities and other activities designed to influence legislation, it is recognized by the regulation which refers not only to sums expended for "lobbying" but also to sums expended for "the promotion or defeat of legislation, the exploitation of propaganda." The regulation thus contains the very language which this Court found lacking in the first clause of the Congressional resolution under review in *United States* v. *Rumely,* 345 U. S. 41. Nor was "lobbying", in the sense of direct dealings with legislators, before this Court when it sustained the applicability of the regulation to publicity activities in *Textile Mills Corp.* v. *Commissioner, supra.*

Even if the regulation could be said to be inapplicable to "open, honest, non-lobbying efforts," as taxpayers contend, the publicity campaigns involved here would not meet that test. Although the publicity was in large part financed by beer and wine wholesalers and liquor dealers, it appeared only under the aegis of "citizen" groups. Although well-known veterans and labor organizations and an association of state sheriffs were mentioned as interested parties, nowhere were the real sponsors disclosed. To the extent, therefore, that *Textile Mills* may be said to rest upon considerations of "secrecy" and "propaganda impossible to trace to its source," the advertising now under review is subject to like condemnation; it was neither "open" nor "honest" but was propaganda from an undisclosed source or from a source the true nature of which was not revealed.

ARGUMENT

TAXPAYERS' PAYMENTS TO ORGANIZATIONS ESTABLISHED TO FINANCE PUBLICITY CAMPAIGNS AIMED AT DEFEATING PROPOSED INITIATIVE LEGISLATION ARE NOT DEDUCTIBLE UNDER SECTION 23 (a) (1) (A) OF THE INTERNAL REVENUE CODE OF 1939

Taxpayers contend that their payments to organizations established to finance publicity campaigns aimed at defeating proposed initiative measures, relating to the liquor laws of the States of Washington and Arkansas, are deductible under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939 (Appendix, *infra*, p. 55). This section permits the deduction of all "ordinary and necessary expenses paid

or incurred during the taxable year in carrying on any trade or business, * * *."[4]

As this Court has said (*Textile Mills Corp.* v. *Commissioner,* 314 U. S. 326, 338): "The words 'ordinary and necessary' are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation." Compare *Commissioner* v. *Heininger,* 320 U. S. 467, with *McDonald* v. *Commissioner,* 323 U. S. 57.

Toward that end, Treasury regulations at least since 1918 have precluded the deduction of sums "expended for lobbying purposes, *the promotion or defeat of legislation, the exploitation of propaganda,* including advertising other than trade advertising, and contributions for campaign expenses * * *" (emphasis added). Sections 29.23 (o)–1 and 29.23 (q)–1 of Treasury Regulations 111 (Appendix, *infra,* p. 57).

The validity of an identical regulation was upheld by this Court (*Textile Mills Corp.* v. *Commissioner, supra*), as well as by all the lower courts which have passed on the question (*infra,* p. 24). And these decisions, including the two here under review, have without exception sustained the applicability of the regulation to expenditures made for the purpose of financing publicity and propaganda campaigns for "the promotion or defeat of legislation," including initiative and referendum proposals.

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[4] This provision was carried over to Section 162 of the 1954 Code without substantive change.

Taxpayers, however, urge (A) that the regulation as applied by the courts below is invalid and (B) that, if valid, the regulation is not applicable here, either on the ground that it does not apply to expenditures to defeat initiative proposals, or on the ground that it applies only to "lobbying," *i. e.*, direct dealings with legislators.

A. THE TREASURY REGULATION BARRING A DEDUCTION FOR SUMS "EXPENDED FOR LOBBYING PURPOSES, THE PROMOTION OR DEFEAT OF LEGISLATION, THE EXPLOITATION OF PROPAGANDA", IS VALID AS APPLIED HERE

1. *The validity of the regulation was sustained in Textile Mills Corp.* v. *Commissioner, 314 U. S. 326, which also involved expenditures to propagandize the general public with respect to legislative action*

An identical regulation was directly challenged before this Court in *Textile Mills Corp.* v. *Commissioner, supra,* a case which presented an entirely comparable factual situation. In that case, the taxpayer had contracted to render services looking toward the enactment of legislation by Congress providing for the return of enemy property seized during World War I. To this end, the taxpayer employed one Lee, a publicist, to prepare speeches, news items, and editorial comment. The taxpayer also employed two legal experts, Martin and Clark, to prepare propaganda on international relations, treaty rights, and this nation's policy with respect to alien property. The issue before this Court was the propriety of deducting, as ordinary and necessary business expenses, expenditures for the services of Lee, Martin, and Clark. The taxpayer contended that the regulation unduly

narrowed the scope of the deduction provided by the statute and that the regulation was therefore invalid. This contention was explicitly rejected by a unanimous Court, stating (pp. 338–339):

> Petitioner's argument that the regulation is invalid likewise lacks substance. The words "ordinary and necessary" are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation. The numerous cases which have come to this Court on that issue bear witness to that. *Welch* v. *Helvering,* 290 U. S. 111; *Deputy* v. *DuPont,* 308 U. S. 488, and cases cited. Nor has the administrative agency usurped the legislative function by carving out this special group of expenses and making them nondeductible.

The Court also noted that the applicable regulation was derived from a Treasury decision, promulgated as early as 1915 (T. D. 2137, 17 Treasury Decisions 48, 57–58), and was thereafter incorporated in the successive regulations promulgated under the Revenue Acts since 1918.[5]

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[5] Taxpayers are in error when they assert (Br. 12, No. 29) that, "Unlike the regulation involved in *Textile Mills*, which had a long history, the present regulation dates only from 1938." The present regulation is identical in form to that under consideration in *Textile Mills*, the history of which is set forth in this Court's opinion (pp. 337–338). While it is now contained in Sections 29.23 (o)–1 and 29.23 (q)–1 of Treasury Regulations 111, promulgated under the 1939 Code, this reissuance of an identical regulation can hardly destroy the effect of its long history.

a. *The Textile Mills decision did not involve expenditures for direct dealings with legislators, as taxpayers erroneously contend*

Taxpayers here are in error when they assert (Br. 24–25, No. 29) that the *Textile Mills* decision also involved the services of one Mondell, an attorney employed to make proposals and suggestions to members of Congress to promote the enactment of legislation. This assertion is made by taxpayers in an attempt to show that the *Textile Mills* decision involved "lobbying" activities and not merely attempts to influence legislation indirectly by the use of publicity and propaganda.

However, not only is this Court's opinion silent as to Mondell, and the services performed by him, but the findings of the Board of Tax Appeals (38 B. T. A. 623) make clear that the only issues involved were deductions claimed for expenditures to Lee, Martin, and Clark. These findings state in part (p. 627):

> It is now agreed between the parties that the amount credited to Mondell in 1929 was for legal services rendered "in connection with particular claims of petitioner's principal, after the enactment of the 'Settlement of War Claims Act of 1928' " and the deduction of that amount has been conceded by the respondent as proper. The respondent also concedes that the amount credited to Ivy Lee in 1929 and the amounts credited to Martin and Clark in 1930 were properly accrued on the petitioner's books for those years, but does not concede that they were deductible. *The deductibility of these items is the only matter left for our determination.* [Emphasis added.]

Similar statements are contained in the opinion of the Court of Appeals. 117 F. 2d 62, 64.

Taxpayers, in addition to their erroneous statements as to the issues involved in *Textile Mills,* also seek to create the impression (Br. 24, No. 29) that Mondell, a former Congressman and majority floor leader, performed lobbying activities on the floor of Congress, "availing himself of his floor privileges to buttonhole and to cajole legislators, including former colleagues" (Br. 26, No. 29). According to taxpayers, this description of Mondell's activities is "reflected in the *Textile Mills* record" (*ibid.*). The record in *Textile Mills,* however, contains nothing even remotely supporting such a description. In addition, as already noted, payments made to Mondell were not even in issue in *Textile Mills.*

Viewing *Textile Mills* in its true light, it becomes apparent that the decision involved no activities which might be characterized as "lobbying" in the sense of direct dealings with legislators. The expenditures there in question financed the dissemination to the general public of propaganda material in the form of speeches, news items, and brochures. The facts in the present cases are clearly comparable since they are similarly concerned with publicity activities designed to defeat legislation. In one sense, it may be said that the facts in the present case present an *a fortiori* situation when compared to those in *Textile Mills.* In the latter, the publicity disseminated to the general public could only indirectly influence legislation by creating a climate of public opinion to influence those

concerned with the passage of the desired legislation, the members of Congress. In the present cases, however, the activities were far more direct, since the publicity on the initiative proposals was aimed at the legislators themselves, namely, the voters of the States of Washington and Arkansas.

b. *The Textile Mills decision was not based on the illegality of any contract*

Taxpayers assert that this Court's decision in *Textile Mills* was based upon the fact that the contract to procure the enactment of legislation, as a result of which the expenditures there involved had been made, was contrary to public policy. This Court did not so hold, and in fact said that the question was "not material."[6]

Moreover, even assuming that the underlying contract in that case were contrary to public policy and hence unenforceable, that conclusion is without relevance. This Court has recently held that expenditures for services rendered in furtherance of a gambling business operated in violation of state law were not rendered nondeductible merely because of the illegal nature of the underlying business. *Commissioner* v. *Sullivan*, 356 U. S. 27. Such expenditures, this Court held (p. 29), are not rendered nondeductible except where "the allowance is a device to avoid the consequence of violations of a law * * * or otherwise

[6] This Court stated (pp. 338–339): "Contracts to spread such insidious influences through legislative halls have long been condemned. *Trist* v. *Child*, 21 Wall. 441; *Hazelton* v. *Sheckells*, 202 U. S. 71. Whether the precise arrangement here in question would violate the rule of those cases is not material."

contravenes the federal policy expressed in a statute or regulation as in *Textile Mills Corp.* v. *Commissioner, supra.*"

It serves no purpose, therefore, to argue as taxpayers do (Br. 26–35, No. 29; Br. 22–24, No. 50) that the underlying contract in *Textile Mills* was illegal. That circumstance did not render the taxpayer's expenditures nondeductible. The determinative factor was, instead, the existence of the very regulation involved here. Cf. *Commissioner* v. *Heininger,* 320 U. S. 467, 470.

2. *Lower court decisions have likewise sustained the validity of the regulation as applied to publicity campaigns for "the promotion or defeat of legislation," including initiative and referendum proposals*

This Court's decision in *Textile Mills,* particularly when examined in the light of the facts presented by that case, stands clearly for the proposition that a regulation identical to the one involved here, when applied to a publicity campaign aimed at the promotion or defeat of legislation, is not contrary to the statute permitting deduction of ordinary and necessary business expenses and is a valid interpretation of the provisions of that statute. The decision in *Textile Mills* has been uniformly so interpreted not only by the courts below but by all other courts which have had occasion to consider the question. *Revere Racing Ass'n* v. *Scanlon,* 232 F. 2d 816 (C. A. 1st); *American Hardware & Eq. Co.* v. *Commissioner,* 202 F. 2d 126 (C. A. 4th), certiorari denied, 346 U. S. 814; *Roberts Dairy Co.* v. *Commissioner,* 195 F. 2d 948 (C. A. 8th), certiorari denied, 344 U. S. 965;

Sunset Scavenger Co. v. *Commissioner,* 84 F. 2d 453 (C. A. 9th); *Old Mission P. Cement Co.* v. *Commissioner,* 69 F. 2d 676 (C. A. 9th), affirmed on other issues, 293 U. S. 289; *Davis* v. *Commissioner,* 26 T. C. 49; *Wm. T. Stover Co.* v. *Commissioner,* 27 T. C. 434; *McClintock-Trunkey Co.* v. *Commissioner,* 19 T. C. 297, reversed on other grounds, 217 F. 2d 329 (C. A. 9th); *Mosby Hotel Co.* v. *Commissioner,* decided October 22, 1954 (1954 P-H T. C. Memorandum Decisions, par. 54,288).[7]

3. *The regulation has acquired the force of law by repeated reenactment of the statutory provision*

In the light of the repeated Congressional reenactment of the statutory provision under which the regulation was promulgated, the regulation has acquired the force of law. *Helvering* v. *Winmill,* 305 U. S. 79, 83; *Commissioner* v. *Flowers,* 326 U. S. 465, 469; *Boehm* v. *Commissioner,* 326 U. S. 287, 291–292. This principle has repeatedly been applied by the courts to the particular regulation here involved. *Textile Mills Corp.* v. *Commissioner, supra,* pp. 338–339; *Sunset Scavenger Co.* v. *Commissioner, supra,* p. 456; *Roberts Dairy Co.* v. *Commissioner, supra,* p. 950;

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[7] But cf. *Smith* v. *Commissioner,* 3 T. C. 696. This case involved the adoption of a self-operative amendment to the Missouri Constitution and the Tax Court was of the opinion (p. 702) that "no legislation was needed or involved." The subsequent decisions of the Tax Court cited in the text, including its decisions in the *McClintock-Trunkey Co.* and *Mosby Hotel Co.* cases, *supra,* indicate that this distinction has for all practical purposes been rejected. Moreover, the *Smith* decision is of no relevance in this case involving an enactment which does not rise to the level of a constitutional amendment. And see note 19, *infra.*

American Hardware & Eq. Co. v. *Commissioner, supra,* pp. 129–130. See also *Commissioner* v. *Heininger,* 320 U. S. 467, 470; *Lilly* v. *Commissioner,* 343 U. S. 90, 95; *Commissioner* v. *Sullivan,* 356 U. S. 27, 28–29.

Taxpayers assert that the doctrine of reenactment is unreliable, citing *Commissioner* v. *Glenshaw Glass Co.,* 348 U. S. 426, 431. But in that case, in which the doctrine was urged by the taxpayer, there was only one decision of the Board of Tax Appeals upon which to support the doctrine. Here the decisions in favor of the construction urged are numerous and authoritative (*supra,* pp. 24–25) and are based upon a regulation which has been in existence for over forty years.

As the Court of Appeals in No. 50 stated (S. R. 42–43):

> It is urged by taxpayer that the quoted regulation, if applicable, is invalid, and in this connection it is contended that as there has been no real re-enactment of the Internal Revenue Code since this regulation was approved by the Supreme Court in the *Textile Mills* case, *supra,* the question of its validity is still an open one and, hence, it is not entitled to the support of the principle that repeated Congressional re-enactment of the statutory provision to which a regulation pertains gives it the force and effect of law. The decision in the *Textile Mills* case was presumably well known to the Congress. The Congress has had many sessions since this decision was handed down and the regulation itself has been in

> effect for nearly forty years, and presumably that fact was also well known to the Congress. Nevertheless, the Congress has passed no act rejecting the construction given this statute by this regulation. * * *

Indeed, not only has Congress passed no act rejecting the construction of this regulation, but since 1934, as we shall show (*infra*, pp. 28–29), it has incorporated like standards in the statutory provisions relating to the deduction of charitable contributions by individuals and corporations.

4. *The regulation is in accord with the long-established Congressional policy against "public subvention" of political pressure activities to influence legislation*

In sustaining an identical regulation in the face of a direct challenge in *Textile Mills*, this Court found that the regulation contravened no Congressional policy. 314 U. S. at 338. It is demonstrable, we believe, not only that the regulation contravened no Congressional policy, but furthermore that it is in accord with an established Congressional policy.

The applicable principles were well stated some years ago by Judge Learned Hand. In *Slee* v. *Commissioner*, 42 F. 2d 184 (C. A. 2d), a case disallowing the deductibility of contributions to the American Birth Control League, one of the declared purposes of which was to effect the repeal of laws preventing birth control, he stated (p. 185): "Political agitation as such is outside the statute, however innocent the

aim, * * *. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.[9]

In *Textile Mills* this Court held that the regulation was a proper exercise of rule-making power, even though the statute there involved was the Revenue Act of 1928, which did not include any express statutory provision barring deductions for expenditures to promote or defeat legislation. However, as the Court noted (314 U. S. at 338, n. 18), Section 23 (q) of the Revenue Act of 1936 provided for deductions by corporations for sums contributed to corporations, trusts, funds, or foundations, organized and operated for religious, charitable, scientific or educational purposes, *"no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."* (Emphasis added.) Identical provisions relating to contributions by individuals had been incorporated in Section 23 (o) of the Revenue Act of 1934, c. 277, 48 Stat. 680, and a provision relating to corporations had been added to that Act, as Section 23 (r), by Section 102 (c) of the

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[9] It should be noted that the statutes involved in *Slee*, Section 214 (a) (11) (B) of the Revenue Act of 1921 and Section 214 (a) (10) of the Revenue Acts of 1924 and 1926, included no specific provisions denying deductions for contributions to organizations substantially engaged in attempting to influence legislation, but merely provided that the organization must be organized and operated "exclusively for religious, charitable, scientific, literary or educational purposes." The express provision relating to organizations substantially engaged in activities involving propaganda or influencing legislation originated with the Revenue Act of 1934.

Revenue Act of 1935, c. 829, 49 Stat. 1014 (later changed to Section 23 (q) of the Revenue Act of 1936, c. 690, 49 Stat. 1648). Identical provisions were incorporated in the 1939 Code as Sections 23 (o) and (q) (Appendix, *infra*, pp. 55–56).[9] Section 101 (6) of the Revenue Act of 1934, and all subsequent Revenue Acts, have included provisions denying exempt status to corporations organized and operated for charitable, religious, educational, and similar purposes, if a substantial part of their activities include "carrying on propaganda or otherwise attempting, to influence legislation." See Section 101 (6) of the 1939 Code (Appendix, *infra*, pp. 56–57).

Thus, Congress did more than prohibit the deduction of expenditures which, as here, were actually made for the purpose of influencing legislation. Instead, Congress prohibited the deduction of contributions to charitable, religious, educational, and similar organizations—contributions which had always been encouraged—merely if a substantial part of the organization's activities included attempts to influence legislation, and further provided that such organizations would lose their tax-exempt status if they carried on such political activities.[10] These stat-

[9] The same provisions are now included in Section 170 of the Internal Revenue Code of 1954.

[10] It is significant to note in this connection that the regulation in question has, almost from its inception, been incorporated in the provisions of the regulations relating to contributions. As previously noted, the first public ruling appeared as T. D. 2137, 17 Treasury Decisions 48, 57–58 (1915), declaring that sums expended for lobbying purposes and contributions for campaign expenses were not deductible by a corpora-

utory provisions, originating in the Revenue Act of 1934, show an established Congressional policy against "public subvention" of propaganda activities to promote or defeat legislation. At the very least, these provisions reflect a Congressional policy which is rel-

tion as an ordinary and necessary business expense. Article 143 of Treasury Regulations 33 (1918 ed.) provided that expenditures for the "promotion or defeat of legislation" were not deductible as ordinary and necessary business expenses.

The regulation first appeared in its present form in Article 562 of Treasury Regulations 45 (1919 ed.), promulgated under the Revenue Act of 1918, and has appeared thereafter without change in all successive regulations. See Article 562 of Treasury Regulations 45 (1920 ed.), 62, 65, and 69, promulgated under the Revenue Acts of 1918, 1921, 1924 and 1926, Article 262 of Treasury Regulations 74 and 77, promulgated under the Revenue Acts of 1928 and 1932, Article 23 (o)-2 of Treasury Regulations 86, promulgated under the Revenue Act of 1934, Article 23 (q)-1 of Treasury Regulations 94, promulgated under the Revenue Act of 1936, Articles 23 (o)-1 and 23 (q)-1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, Sections 19.23 (o)-1 and 19.23 (q)-1, 29.23 (o)-1 and 29.23 (q)-1, and 39.23 (o)-1 and 39.23 (q)-1 of Treasury Regulations 103, 111, and 118, respectively, promulgated under the Internal Revenue Code of 1939, and Section 1.162-15 of the Proposed Income Tax Regulations under the Internal Revenue Code of 1954.

Beginning with Treasury Regulations 45 (1919 ed.), this provision was incorporated for reasons of convenience in the article relating to corporate deductions, entitled "Donations." Prior to 1928, there were separate provisions in the Revenue Acts dealing with expenses allowable to individuals and expenses allowable to corporations, although the provisions were identical. See, *e. g.*, Sections 214 (a) (1) and 234 (a) (1) of the Revenue Act of 1926, 44 Stat. 9. Moreover, these early Revenue Acts provided for deductions by individuals for charitable contributions, but made no similar provision for corporations. However, it was recognized that such donations might, under some circumstances, qualify as "ordinary and necessary" business expenses of a corporation. Accordingly, there appeared

evant in construing the cognate provisions of Section 23 (a).

Certainly it would seem anomalous to hold, as taxpayers apparently urge, that a corporation's pay-

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in the Regulations, under the statutory provisions relating to corporate donations, an article indicating when such donations were deductible as expenses. Since lobbying and other similar expenses were thought to be loosely related to donations, the provisions dealing therewith were likewise incorporated in the same article. It should be noted that this prohibition was not included during these many years in the articles of the Regulations dealing with charitable donations by individuals, although the articles dealing with individuals did refer to the articles relating to corporate donations. Thus, it is clear that the Regulations spelled out when such expenditures might or might not be deductible as "ordinary and necessary" business expenses.

In 1928, the structure of the revenue statute was simplified, and expense deductions for corporations and individuals were incorporated in a single section, namely, Section 23 (a). Under the reorganized structure, charitable contributions by individuals were dealt with in Section 23 (n). For functional reasons, it was considered to be more desirable to continue thereafter the prohibition against these deductions in the regulatory provisions dealing with corporate donations. Although the provision relating to the deductibility of donations by corporations had existed in the Regulations for many years, a similar prohibition was not included in the provisions of the Regulations dealing with individuals until 1939, and then by Article 23 (o)–1 of Treasury Regulations 101. Thus, it is clear from the origin of these provisions, as well as from their content, that they are concerned with the question of whether expenditures for lobbying purposes, the promotion or defeat of legislation, etc., are deductible as "ordinary and necessary" business expenses. This is further shown by the fact that in the Proposed Income Tax Regulations under the 1954 Code this prohibition is contained in Section 1.162–15, which is placed under Section 162, dealing with trade or business expenses, rather than under Section 170, dealing with charitable and other contributions by individuals and corporations.

ments to a group organized to finance publicity campaigns for "the promotion or defeat of legislation" are deductible under Section 23 (a) (1) (A) as ordinary and necessary business expenses, even though a contribution by the same corporation to a religious, charitable, or educational organization—no matter how praiseworthy—is not deductible under Section 23 (q) if any substantial part of the recipient organization's activities is "carrying on propaganda, or otherwise attempting, to influence legislation." In our view, by the enactment of these provisions, Congress demonstrated its intention that such activities should be completely withdrawn from the area of "public subvention," regardless of the form of the expenditure, and that the Treasury should not be a party to such activities by partially subsidizing such practices through the medium of tax deductions. See *Commissioner* v. *Sullivan, supra,* p. 29.

The background of these statutory provisions is illuminating. As early as 1913, activities designed to defeat the Underwood Tariff Bill provoked a Congressional investigation in which it was disclosed that the Beet Sugar Growers' Association and the Wholesale Grocers' Association had each spent over $500,000 to influence the content of the bill and that 1,525,000 pieces of literature had been mailed under Congressional frank. Lane, *Some Lessons from Past Congressional Investigations of Lobbying,* 14 Pub. Op. Quar. 14 (1950). The House Committee charged, moreover, that the National Association of Manufacturers had carried on a propaganda campaign through newspapers, publicists, speakers and literature in

schools, colleges and civic organizations throughout the country. H. Rep. No. 113, 63d Cong., 2d. Sess., 51 Cong. Rec. 565–584, 566–567, 574. Again in 1929–1931, the Caraway Committee investigated activities designed to affect legislation, and its interim reports detailed the methods of expenditures and the techniques used by various groups in attempting indirectly to influence legislation. S. Rep. No. 43, 71st Cong., 1st Sess., Part 4 (American Taxpayers' League), Part 5 (sugar lobby), Part 7 (Muscle Shoals lobby).

In 1935–1936, shortly after the statutory provisions involved here were enacted (see *supra*, pp. 28–29), the Black Committee was authorized to investigate "all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly," in connection with the Public Utility Holding Company Act. (S. Res. 165 and 184, 74th Cong., 1st Sess.) In 1938 the Civil Liberties Committee of the Senate Committee on Education and Labor described a large-scale propaganda campaign undertaken to sway public opinion to support legislation in the field of industrial relations. The Committee referred to "[r]adio speeches, public meetings, news, cartoons, editorials, advertising, motion pictures" as "devices of molding public opinion [which] have been used without disclosure of [their] origin and financial support * * *." S. Rep. No. 6, Part 6, 76th Cong., 1st Sess., pp. 218–219.

In 1941, the Temporary National Economic Committee published its Monograph No. 26 entitled "Economic Power and Political Pressures," which dealt

with lobbying and propaganda techniques. It recommended (p. 194) disclosure of sources of funds and expenditures for public relations services, advertising, radio, etc. And in 1946 Congress enacted the Federal Regulation of Lobbying Act, c. 753, 60 Stat., 812, 839. Subsequent to that Act, there was established the Select Committee on Lobbying Activities of the House of Representatives. That Committee was informed, as earlier Committees had been, that the "buttonholing" of Congressmen was no longer a major problem in connection with lobbying. The major aspect of efforts to influence legislation were the indirect efforts to "make" public opinion in order to produce the demand for desired legislation, and it was said that "modern public relations counsel * * * use all the techniques of high-pressure publicity—press, radio, movies, advertising, pamphlets, books, magazines, exhibits—in an attempt to arouse legislative and public support for their programs." Hearings, House Select Committee on Lobbying Activities, 81st Cong., 2d Sess., Part 1, p. 99. The magnitude of this problem is illustrated by the fact that those corporations which replied to questionnaires issued by this Committee admitted expending over 32 million dollars to influence legislation for the period from January 1, 1947, to May 31, 1950. Of this amount, over 31 million dollars was expended for the printing and distribution of publications, non-trade advertising, and contributions to trade organizations or associations. H. Rep. No. 3137, 81st Cong., 2d Sess., pp. 1, 61, 183, 255, 520.[10a]

[10a] And see New York Times, November 4, 1956, p. 76, col. 1, estimating that nearly two million dollars was spent for publicity in connection with just one of nineteen initiative measures on the California ballot in the 1956 election.

This history reflects a continued Congressional concern with the use of large sums of money to finance "the engineering of consent"[11]—to "make" public opinion on matters of legislation—particularly where large economic interests are all on one side of the controversy.[12] The statutory provisions with respect to expenditures to influence legislation reflect a coordinate Congressional policy against "public subvention" of such activities through tax deductions or exemptions; as to such activities, "the Treasury stands aside from them." *Slee* v. *Commissioner, supra.*

The position urged by the taxpayers not only is in conflict with that policy, but would actually serve to aggravate the very problem which Congress sought to meet in enacting the legislation. At the present time, under the prevailing interpretation of Section 23 (a) (1) (A), any campaigns financed by industry to influence legislation cannot be charged to the Government by taking these expenses as a deduction. The financing is thus entirely out of the pocket of the concerns involved. This is equally true as respects any citizens' organizations which might be formed to conduct similar campaigns, since contributions to

[11] See Bernays, *The Engineering of Consent* (1955); Bernays, *The Engineering of Consent*, Annals of the American Academy (March 1947), p. 113; Dudley, ***Molding Public Opinion Through Advertising***, *id.*, p. 105.

[12] The history of the related Congressional policy to try to keep federal elections "free from the power of money" is recounted in *United States* v. *Auto. Workers*, 352 U. S. 567, 570–578.

these campaigns would not qualify as charitable contributions and accordingly are not deductible. The same is true of labor organizations. Thus a tax equilibrium exists. If the expenses of the business community were to become deductible, this tax equilibrium would be upset. While the business community could deduct their expenses, all others could not.

Suppose, for example, that a citizens' organization had been established in the State of Washington for the purpose of financing a campaign *supporting* the initiative proposal involved in No. 29 to limit the sale of wine and beer to state-owned stores. Contributions to that organization would not be deductible. But, under taxpayers' construction, the liquor industry could deduct without limit their payments to organizations *opposing* the same measure.

Any such change upsetting the tax equilibrium, moreover, would particularly be of aid to the larger enterprises in the business community. The value of a deduction, in dollars and cents, depends on the tax rate applicable to the particular taxpayer. For example, the small businessman of modest income whose tax rate is only 20–30% realizes a tax saving of only 20–30% of the deductions claimed; in contrast, the businessman with an income ranging into the hundreds of thousands yearly, whose tax rate is 80–90%, realizes a tax saving of 80–90% of such deductions; while a corporation, by the same calculations, realizes a saving of 52%. Thus, the effect of the Congressional policy of

disallowing deductions for expenditures to influence legislation is, at least in some measure, an equalizing influence within the business community; all businesses alike bear the full burden of such expenses. On the other hand, if such a deduction were allowable, the out-of-pocket cost of such expenditures would be sharply reduced for the businesses with large incomes (corporations, for example, would pay only 48¢ on the dollar, and many individual taxpayers would have an even lower net cost); but the smaller businessman would receive only slight benefit (his net cost would, for example, be 70¢ or 80¢ on the dollar).

Stated otherwise, the anomalous result of "public subvention" of such expenditures would be to *increase* the relative power of business enterprises (especially large ones), *vis-à-vis* private citizens and other taxpayers, to finance the "engineering of consent" on legislative matters. As we have shown, the pattern of Congressional action in this area indicates a Congressional purpose to reduce this disparity, not to increase it. In this delicate area, if any changes as above indicated are to be made, we submit that it is Congress—not the courts—which should make them.

5. *The First Amendment is not violated by the Congressional policy against "public subvention" of political pressure activities to influence legislation*

Taxpayers suggest that if the regulation is construed to deny the deductions claimed, a substantial

constitutional issue under the First Amendment would be presented (Br. 44, No. 29; Br. 18, No. 50). On that basis, they urge that their construction of the regulation should be adopted for the purpose of avoiding the necessity of deciding the constitutional issue they pose. The issue, however, is not a substantial one. Taxpayers themselves did not regard the issue as sufficiently substantial even to warrant mentioning in the courts below;[13] nor does it appear that the issue was raised in any other case in the 40-year history of the regulation.

The argument, as we understand it, is that Congress cannot permit the deduction of some expenditures as ordinary and necessary business expenses while at the same time denying the deduction to other expenditures on the ground that the money was used to influence legislation by financing publicity activities involving speech. Taxpayers (Br. 19, No. 50; Br. 44, No. 29) acknowledge that "even consideration of any constitutional problem" (*ibid.*) would be avoided if the regulation were construed to apply only to expenditures used to finance "lobbying—the exercise of personal influence, the use of personal solicitation" (Br. 31, No. 29); but such "lobbying" activities involve speech at least to the same degree as the advertising involved here. We also assume that taxpayers do not challenge the constitutionality of federal legislation limiting the amount of individual con-

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[13] Having failed to raise the issue below, taxpayers cannot do so for the first time in this Court. *E. g.*, *Duignan* v. *United States*, 274 U. S. 195, 200.

tributions to finance the election campaigns of political candidates for federal offices;[14] but if such legislation is valid, as we think it clearly is,[15] then surely it is also valid to disallow a deduction for

[14] The Federal Corrupt Practices Act requires every political committee to have a chairman and a treasurer who shall keep an account of all contributions and expenditures (2 U. S. C. 242), and shall report such data to the Clerk of the House of Representatives at stated times (2 U. S. C. 244). Anyone else who makes an expenditure aggregating more than fifty dollars within a calendar year for the purpose of influencing an election in two or more States is similarly required to report it to the Clerk of the House of Representatives (2 U. S. C. 245). Political candidates are also required to make statements to the Clerk of the House of Representatives concerning contributions and expenditures, the names of the persons involved, and any promises or pledges made by him relative to appointments either to public or private employment together with an identification of such person (2 U. S. C. 246). Finally, the Act limits to a definite sum the amount of expenditures which may be incurred by such candidate (2 U. S. C. 248). Other legislative provisions now contained in the Criminal Code limit individual contributions to candidates to $5,000 during any calendar year, and prohibit even indirect benefits to such candidates through purchasing goods, commodities, advertising, or articles of any kind which would inure to the candidate's benefit, except in connection with "the usual and known business, trade, or profession of any candidate" (18 U. S. C. 608). No political committee is allowed to "receive contributions aggregating more than $3,000,000, or make expenditures aggregating more than $3,000,000 during any calendar year" (18 U. S. C. 609). And see note 15, *infra.*

[15] Cf. *Burroughs and Cannon* v. *United States*, 290 U. S. 534; *United States* v. *United States Brewers' Association*, 239 Fed. 163 (W. D. Pa.). The latter decision upheld the validity of an outright prohibition (now contained in 18 U. S. C. 610) against *any* contributions by corporations in connection with federal elections. The court stated (pp. 168–169):

"And when we reflect that Congress is here dealing with elections at which Representatives in Congress are being voted

payments (as here) to finance publicity campaigns to influence legislation.

Only recently this Court pointed out (*Commissioner* v. *Sullivan,* 356 U. S. 27, 28) that "Deductions are a matter of grace and Congress can, of course, disallow them as it chooses." This statement, no doubt, is subject to the qualification that a grossly unreasonable classification of deductions will exceed constitutional limitations, particularly if the classification is "aimed at the suppression of dangerous ideas." See *Speiser* v. *Randall,* 357 U. S. 513, 519. But that clearly is not this case. The regulation treats all legislation alike, regardless of the political party or pressure group; it does not single out any particular kind of legislation as good or bad, innocuous or dangerous, orthodox or radical. Indeed, it is taxpayers themselves who would have the taxing authorities make a qualitative evaluation of different types of speech; they argue that the regulation does not apply to expenditures which are "completely free of taint from law or morals" (Br. 20, No. 50) or are "open, above-

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for; that an election is intended to be the free and untrammeled choice of the electors; that any interference with the right of the elector to make up his mind how he will vote is as much an interference with his right to vote as if prevented from depositing his ballot; *that the concerted use of money is one of the many dangerous agencies in corrupting the elector and and debauching the election*; that any law the purpose of which is to enable a free and intelligent choice, and an untrammeled expression of that choice in the ballot box, is a regulation of the manner of holding the election—the power of Congress to prohibit corporations of the state from making money contributions in connection with any such election appears to follow as a natural and necessary consequence." (Emphasis added.)

board, legitimate" (Br. 32, No. 29), and even contend that the regulation is unconstitutional if otherwise construed (Br. 18, 20, No. 50).

The regulation is also unlike the statute in *Speiser, supra,* in that it does not require the taxpayers to execute a loyalty oath or to assume the burden of proving their loyalty. The regulation places no limit on the amount of money which can be spent on legislation or the manner in which it shall be spent.[16] All that the regulation does is ensure that business enterprises—no more than private citizens—shall not look to the Treasury to recoup the cost of influencing legislation.

Not only is the regulation constitutional, but taxpayers are incorrect in asserting that adoption of their construction of the regulation would avoid the necessity of deciding the constitutional issue. Actually, what the taxpayers challenge here is, not merely the construction of a Treasury regulation, but rather the whole long-established Congressional policy against "public subvention" of political pressure activities to influence legislation. Pursuant to that policy, as we have shown (*supra,* pp. 28–32), Congress has repeatedly prohibited any deductions for contributions to a religious, charitable, educational, or similar organization if a substantial part of the organization's activities is "carrying on propaganda, or otherwise attempting, to influence legislation." Furthermore, in another section, Congress has provided

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[16] Compare the federal statutes governing contributions to political candidates. See note 14, *supra*.

for denial of the exempt status of organizations carrying on such political activity. Taxpayers have not suggested any reason why these two statutory provisions are any less vulnerable to constitutional attack than the regulation involved here. If there is no difference in this respect, then no constitutional issue would be avoided by adoption of taxpayers' construction of the regulation, and the alleged advantage of such a construction for that purpose is wholly illusory.

We submit that taxpayers' constitutional argument, not even made in the courts below,[17] is without merit.

B. THE REGULATION IS APPLICABLE TO INITIATIVE LEGISLATION

1. *The regulation is not limited to indirect "legislation" by the legislature*

a. *The reference in the regulation to "legislation" also relates to direct legislation by the electorate*

Taxpayers concede (Br. 40, No. 29) that laws enacted by initiative or referendum constitute "direct legislation by the people" and that an initiative proposal when approved by the electorate becomes as much a part of the body of legislative law of a state as any enactment of the legislature. Nevertheless, taxpayers attack the decisions of the courts below upon the ground that they have mechanically applied dictionary definitions in holding that such laws constitute "legislation" within the meaning of the regulation.[18]

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[17] See note 13, *supra*.

[18] Initiative is defined in Webster's New International Dictionary (2d ed.), p. 1280, as follows: "The procedure or device by which legislation may be introduced or enacted directly by the people, as in the Swiss Confederation and in many of the States of the United States."

Taxpayers (Br. 38–39, No. 29) characterize the decisions below as resting on the premise that "legislation is legislation"; if so, taxpayers' position appears to be that "direct legislation" is not "legislation."

It is axiomatic that our federal and state constitutions represent grants of power, including the legislative power, by the people. Amendment 7 of the Constitution of the State of Washington provides in pertinent part as follows:

> Art. 2 Section 1. *Legislative Powers, Where Vested.* The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, * * *.

Amendment 7 to the Constitution of the State of Arkansas is for all relevant purposes identical. Under these constitutions, the people granted legislative power to their legislatures but reserved to themselves the right to enact laws independent of the legislatures. The enactment of laws in such fashion is plainly an exercise of legislative power and the product cannot be considered as anything other than legislation. See *Senior Cit. L.* v. *Dept. Soc. Sec.*, 38 Wash. 2d 142; *Wallace* v. *Zinman*, 200 Cal. 585; *Kadderly* v. *Portland*, 44 Ore. 118; *Commonwealth* v. *Higgins*, 277 Mass. 191; *In re Opinion of the Justices*, 118 Me. 544; *Dawson* v. *Tobin*, 74 N. D. 713.

The regulation in terms refers to "legislation" and does not attempt to distinguish between various types of legislation. Not one of the courts which have considered the question, including the Tax Court, has suggested that initiative legislation is outside the scope of the regulation. *Revere Racing Ass'n* v. *Scanlon, supra; Sunset Scavenger Co.* v. *Commissioner, supra; Old Mission P. Cement Co.* v. *Commissioner, supra; Davis* v. *Commissioner, supra; McClintock-Trunkey Co.* v. *Commissioner, supra.*[19] And,

[19] Taxpayers find support only in the decision of the Tax Court in *Smith* v. *Commissioner*, 3 T. C. 696. That case, as previously noted, involved the adoption of a self-operative amendment to the Missouri constitution, and in the Tax Court's view (p. 702) "no legislation was needed or involved." The most that can be said for that decision is that the Tax Court made an erroneous distinction between legislation and amendments to a state constitution. Whatever validity that decision may have had has been vitiated by the more recent decision of the Tax Court in *Mosby Hotel Co.* v. *Commissioner*, decided October 22, 1954 (1954 P-H T. C. Memorandum Decisions, par. 54,288), which held that publicity undertaken for the enactment of a constitutional amendment repealing prohibition constituted the promotion or defeat of legislation. In any event, the Tax Court has consistently held in the cases cited above, as well as in its decision in No. 50 (28 T. C. 591), that initiative proposals constitute legislation within the meaning of the regulation here in question. Moreover, a constitutional amendment is not here involved.

As taxpayers note, the Commissioner's acquiescence in *Smith* v. *Commissioner*, *supra*, was withdrawn by Rev. Rul. 58-255, 1958-21 Int. Rev. Bull. 16. The withdrawal of that acquiescence was a recognition by the Commissioner that the distinction drawn between constitutional amendments and other forms of legislation was unsound and was not supported by the decisions of the courts which have interpreted the regulation. The fallacy of taxpayers' attack on this revenue ruling, because it purportedly ignores the illegality of an underlying

even as an original matter, it can hardly be regarded as unreasonable to deny the deduction to *both* expenditures to propagandize the general public with respect to legislative action by their representatives (as in *Textile Mills*) and expenditures to propagandize the general public with respect to legislative action by the people themselves (as here).

Whatever may have been the motivation for the adoption of the initiative and referendum in some of our states, the fact remains that laws enacted through

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contract, has been discussed in the preceding portion of this brief (pp. 23–24, *supra*).

Taxpayers are also in error in seeking to inflate the significance of an acquiescence by the Commissioner in a particular Tax Court decision. See 1958–21 Int. Rev. Bull. 8:

"It is the policy of the Internal Revenue Service to announce in the Internal Revenue Bulletin at the earliest practicable date the determination of the Commissioner to acquiesce or not to acquiesce in a decision of The Tax Court of the United States which disallows a deficiency in tax determined by the Commissioner to be due. Notice that the Commissioner has acquiesced or nonacquiesced in a decision of The Tax Court relates only to the issue or issues decided adversely to the Government. Actions of the acquiescences in adverse decisions should be relied on by Revenue officers and others concerned as conclusions of the Service only to the application of the law to the facts in the particular case. Caution should be exercised in extending the application of the decision to a similar case unless the facts and circumstances are substantially the same, and *consideration should be given to the effect of new legislation, regulations, and rulings as well as subsequent court decisions* and actions thereon. Acquiescence in a decision means acceptance by the Service of the conclusion reached, and does not necessarily mean acceptance and approval of any or all of the reasons assigned by the Court for its conclusions. No announcements are made in the Bulletin with respect to memorandum opinions of The Tax Court." (Emphasis added.)

such methods constitute, as taxpayers concede (Br. 40, No. 29), "direct legislation by the people." If it be correct, as taxpayers assert, that these devices were adopted in order to obtain freedom "from the control of money in politics" (Br. 40, No. 29), it would seem that this purpose has not been accomplished here. The wholesale and retail wine and beer dealers in No. 29 expended the sum of $231,257.10 for a program designed to defeat the initiative proposal in question. (C. R. 46.) The liquor wholesalers in No. 50 likewise expended over $100,000 for a concentrated publicity program designed to defeat the initiative measure. Thus we have large sums of money expended by business enterprises to defeat proposed legislation, while apparently there were no similar interests advocating the adoption of the legislation. Freedom "from the control of money" is surely not achieved where the persons or corporations having the financial means to undertake to influence the electorate are all on one side of the issue.[20] And particularly in this so where, as here, the real source of the funds is effectively concealed from the general public (*infra*, pp. 51–53).

[20] In this connection, it is significant that in the State of Washington express statutory provision is made for circulating a pamphlet copy of the initiative measure, together with the arguments relating thereto, at state expense. Such pamphlet contains the arguments both for and against the measure, under appropriate equalized limitations. Revised Code of Washington, Sections 29.79.330–29.79.420.

b. *Taxpayers' payments, moreover, were for "the exploitation of propaganda" within the meaning of the regulation*

The regulation not only precludes the deduction of expenditures, for "the promotion or defeat of legislation" but also expenditures for "the exploitation of propaganda." Taxpayers' expenditures fall into both categories.

By portraying the Washington initiative providing for the sale of beer and wine in state stores as leading to the return of the "speakeasy", "bootleggers", "gangsters" and "racketeers" (accompanied by appropriately sinister illustrations) and as a measure advanced only by prohibitionists (C. R. 152–166), the advertisements in No. 29 constituted "propaganda" within any commonly accepted definition of that term. The advertisements in No. 50, while not as colorful in their presentation, similarly portrayed the results of the Arkansas activities as leading to the return of bootleggers, crime, and lawlessness (S. R. 14–16, 21, 23). Whether propaganda be defined as a "planned or concerted attempt to influence public opinion" or "to spread a particular doctrine or system of doctrines or principles" (*Seasongood* v. *Commissioner*, 227 F. 2d 907, 911 (C. A. 6th)), or whether it is "public address with selfish or ulterior purpose and characterized by the coloring or distortion of facts" (*ibid.*), the publicity program under review satisfied either definition. It can hardly be characterized as an open and objective presentation of facts from disclosed sources; it was a concerted attempt to influence

public opinion by colored facts from concealed sources which, had their identity been revealed, would have disclosed a selfish or ulterior motive (*infra*, pp. 51–53).

2. *The regulation is not limited to "lobbying" activities consisting of direct dealings with legislators*

a. *As the Textile Mills decision shows, the regulation also covers publicity campaigns aimed at the general public*

Taxpayers distinguish "lobbying—the exercise of personal influence, the use of personal solicitation" (Br. 31, No. 29)—from other activities designed to influence legislation, and argue that only "lobbying" is within the scope of the regulation involved here.

To the extent that such a distinction exists, however, it is recognized by the regulation, which is explicitly drawn to cover both types of activities. It precludes the deduction, not only of sums expended "for lobbying purposes," but also sums expended for "the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising and contributions for campaign expenses * * *." The latter terms must also be given effect according to their ordinary and natural meaning, and they clearly refer to activities other than "the exercise of personal influence, the use of personal solicitation.". This has been the consistent interpretation of this language by the Courts of Appeals and the Tax Court. *Revere Racing Ass'n* v. *Scanlon, supra; American Hardware & Eq. Co.* v. *Commissioner, supra; Roberts Dairy Co.* v. *Commissioner, supra; Sunset Scavenger Co.* v. *Commissioner, supra;*

Old Mission P. Cement Co. v. *Commissioner, supra; Davis* v. *Commissioner, supra; McClintock-Trunkey Co.* v. *Commissioner, supra; Wm. T. Stover Co.* v. *Commissioner, supra; Mosby Hotel Co.* v. *Commissioner, supra; Kirby* v. *Commissioner,* 35 B. T. A. 578. Under the contrary interpretation urged by the taxpayers, the words "the promotion or defeat of legislation, the exploitation of propaganda" would be mere surplusage.

The fallacy of taxpayers' position on this issue is further demonstrated by *United States* v. *Rumely,* 345 U. S. 41, on which they rely. That case (p. 44) involved the interpretation of a Congressional resolution authorizing an investigation of

> (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation.

The Court held (p. 47) that publicity efforts "to saturate the thinking of the community" were not encompassed by the first clause of the resolution. But the Court also made it abundantly clear that there was no such omission with respect to the second clause (*supra*), relating generally to "activities * * * intending to influence, encourage, promote or retard legislation."[21] This broader second clause is paralleled

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[21] The Court stated (p. 47):

"If 'lobbying' was to cover all activities of anyone intending to influence, encourage, promote or retard legislation, why did Congress differentiate between 'lobbying activities' and other 'activities * * * intended to influence'? Had Congress wished

in every respect by the regulation involved in the instant case. Like that clause, the regulation expressly includes expenditures for "the promotion or defeat of legislation" (and "the exploitation of propaganda"), in addition to "lobbying", and thus contains the very language which this Court found lacking in *Rumely*. See also *United States* v. *Harriss*, 347 U. S. 612.

As we have already shown (*supra*, pp. 19–22), the *Textile Mills* decision itself, like the *Rumely* decision, involved a publicity campaign "to saturate the thinking of the community." The deductions there at issue related to the preparation and dissemination of news items, speeches, editorials, and similar material—in other words, not direct dealings with legislators (or "buttonholing"), but rather propaganda "directed at the entire body politic" (Pet. 9, No. 29). The expenditures represented compensation to three individuals—a publicist and two lawyers. None of the three, it appears, ever engaged in what the taxpayers call "lobbying, i. e., the exertion of pressures and persuasion on individual legislators * * *" (Pet. 9, No. 29) or "the exercise of personal influence, the use of personal solicitation" (Br. 31, No. 29). See 314 U. S. 326, 336; 38 B. T. A. 623, 625. Here, on the other hand, the taxpayers' efforts "to saturate the thinking of the community" were directed at the

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to authorize so extensive an investigation of the influences that form public opinion, would it not have used language at least as explicit as it employed in the very resolution in question in authorizing investigation of government agencies?"

legislators themselves, the people of the States of Washington and Arkansas.

b. *Even if the regulation were inapplicable to "open, honest, non-lobbying efforts," as taxpayers contend, their payments would not qualify under that test*

The taxpayers in No. 29 not only seek to read the *Textile Mills* decision as involving "buttonholing," but they also urge that the decision turned on considerations of "secrecy" (Br. 33, No. 29) and "propaganda impossible to trace to its source" (Br. 26, No. 29). As we have shown (*supra*, pp. 19–22), there is no basis for such a reading of *Textile Mills*. Indeed, the taxpayer in No. 50 expressly "recognizes that, with a minor exception not worth noting, there was no insidious activity on the part of the taxpayer in that case" (Br. 22, No. 50).

Moreover, even if we were to assume that *Textile Mills* did rest upon considerations of "secrecy" and "propaganda impossible to trace to its source," the facts in these cases do not show any significant divergence. Involved here, according to taxpayers, are "open, honest, non-lobbying efforts directed at legislation" (Br. 26, No. 29; see also Br. 20, No. 50). Although we certainly agree that the taxpayers' publicity campaigns were "directed at legislation" (see *supra*, pp. 42–46), we doubt that the campaigns can be said to meet the test of "open, honest non-lobbying efforts," even assuming that such a test governed deductibility.

As the District Court found in No. 29 (R. 46):

> The program was carried out by various types of advertising none of which had reference to the wares or members of the Association as such.

A brief glance at the examples of advertising utilized discloses that nowhere does it appear that the campaign was sponsored by beer and wine wholesalers or retailers or any others who had a financial interest in the legislative result. Instead, such advertising appeared under the aegis of "Men and Women Against Prohibition" or the "Citizens Liquor Control Council, Inc." (C. R. 151–182). Although the Veterans of Foreign Wars, the American Legion, the Washington Federation of Labor, the Seattle Central Labor Council, and the Washington State Sheriffs' Association are mentioned as interested groups (C. R. 155), there is no disclosure of interest on the part of the beer and wine retailers or wholesalers, the Wholesalers Association, or the Industry Advisory Committee. Similarly, the advertising in No. 50, financed in substantial part by Arkansas Legal Control Associates, Inc., an association of liquor wholesalers (S. R. 27–30), appeared under the disclosed sponsorship only of "Arkansas Against Prohibition", described simply as a group of citizens (S. R. 14–16, 21, 23). The financial support and interest of liquor wholesalers, such as taxpayer in No. 50, remained untraceable.

The advertising now under review, therefore, is subject to the same condemnation as propaganda from an undisclosed source or from a source whose true nature is not revealed; and it involves many of the evils which taxpayers assert to be encompassed

within the term "lobbying." It was far from the "open, honest" presentation claimed by taxpayers. Certainly the presentation of arguments against prohibition by undisclosed beer and wine or liquor wholesalers is neither "open" nor "honest"; and as a result the voters were precluded from considering the merits of the arguments in the light of their true source.

In *United States* v. *Harriss*, 347 U. S. 612, 625, this Court stated:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. * * *

For the same reasons, a comparable "ability to properly evaluate such pressures" is no less important when, as here, the people themselves act as legislators.[22]

[22] Cf. Mr. Justice Black, dissenting in *Viereck* v. *United States*, 318 U. S. 236, 251:

"* * * Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather

CONCLUSION

For the reasons stated, it is respectfully submitted that the decisions of the courts below are correct and should be affirmed.

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than detracts from the prized freedoms guaranteed by the First Amendment. No strained interpretation should frustrate its essential purpose."

APPENDIX

Internal Revenue Code of 1939:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [As amended by Section 121 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * *.

* * * * *

(o) [As amended by Section 224 (a) of the Revenue Act of 1939, c. 247, 53 Stat. 862] *Charitable and Other Contributions.*—In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:

* * * * *

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * * * *

(q) [As amended by Section 224 (b) of the Revenue Act of 1939, *supra;* Section 125 of the Revenue Act of 1942, c. 619, 56 Stat. 798; Section 114 of the Revenue Act of 1943, c. 63, 58 Stat. 21] *Charitable and Other Contributions by Corporations.*—In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of:

* * * * *

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States, or of any State or Territory, or of the District of Columbia, or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary, or educational purposes or for the prevention of cruelty to children, * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; * * *.

* * * * *

(26 U. S. C. 1952 ed., Sec. 23)

SEC. 101 [As amended by Section 301 (b) of the Revenue Act of 1950, c. 994, 64 Stat. 906; Section 314 (b) of the Revenue Act of 1951, c. 521, 65 Stat. 452]. EXEMPTIONS FROM TAX ON CORPORATIONS.

Except as provided in paragraph (12) (B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated ex-

clusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation * * *

* * * * *

(26 U. S. C. 1952 ed., Sec. 101)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

SEC. 29.23 (o)-1. *Contributions or Gifts by Individuals.*—* * *

* * * * *

Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

* * * * *

SEC. 29.23 (q)-1. *Contributions or Gifts by Corporations.*—* * * Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses are not deductible from gross income.

* * * * *

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